

BOARD OF REGISTERED NURSING
Administrative Committee
Agenda Item Summary

AGENDA ITEM: 6.1
DATE: September 14, 2011

ACTION REQUESTED: Board and Committee Meeting Dates

REQUESTED BY: Jeannine Graves, RN
President

BACKGROUND: Board/Committee Meetings for 2012
(Attached)

NEXT STEPS:

FISCAL IMPLICATIONS, IF ANY: None

PERSON TO CONTACT: Louise Bailey, M.E.d., RN
Executive Officer
(916) 574-7600

BOARD/COMMITTEE MEETINGS 2012

January 11, 2012 Location TBD		Education/Licensing Committee Diversion/Discipline Committee Nursing Practice Committee Legislative Committee	South
February 15-16, 2012 Location TBD		Day 1 Board Meeting – Administrative Day 2 Board Meeting – Discipline	South
March 14, 2012 Location TBD		Education/Licensing Committee Diversion/Discipline Committee Nursing Practice Committee Legislative Committee	North
April 18-19, 2012 Location TBD		Day 1 Board Meeting – Administrative Day 2 Board Meeting – Discipline	North
May 23, 2012 Location TBD		Education/Licensing Committee Diversion/Discipline Committee Nursing Practice Committee Legislative Committee	South
June 20-21, 2012 Location TBD		Day 1 Board Meeting – Administrative Day 2 Board Meeting – Discipline	South
August 1, 2012 Location TBD		Education/Licensing Committee Diversion/Discipline Committee Nursing Practice Committee Legislative Committee	North
September 12-13, 2012 Location TBD		Day 1 Board Meeting – Administrative Day 2 Board Meeting – Discipline	North
October 10, 2012 Location TBD		Education/Licensing Committee Diversion/Discipline Committee Nursing Practice Committee Legislative Committee	South

The meeting dates and/or locations are tentative and subject to change. For verification of the meeting, access the Board's web site at <http://www.rn.ca.gov>

November 14-15, 2012
Location TBD

Day 1 Board Meeting – Administrative
Day 2 Board Meeting – Discipline

South

BOARD OF REGISTERED NURSING
Administrative Committee
Agenda Item Summary

AGENDA ITEM: 6.2

DATE: September 14, 2011

ACTION REQUESTED: Enforcement-Regulation Proposals

- California Code of Regulations, Article 1, Section 1403, Delegation of Certain Functions
- California Code of Regulations, Article 2, Section 1410, Application
- California Code of Regulations, Article 4, Section 1441, Unprofessional Conduct
- California Code of Regulations, Article 4, Section 1443.6, Required Actions Against Registered Sex Offenders
- California Code of Regulations, Article 4, Section 1444.5, Disciplinary Guidelines

REQUESTED BY: Jeannine Graves, RN
President

BACKGROUND:

At its June 14, 2011, meeting, the Board voted to modify the Enforcement-Regulation Proposal as follows:

1403. Delegation of Certain Functions—add requirement to report to the Board settlement agreements for the revocation, surrender, or suspension of a license approved by the Executive Officer.

1410. Application—delete (d) which enabled the Board to require an applicant for licensure to undergo physical or mental examination(s) whenever it appeared that the applicant might be unable to practice nursing safely due to physical or mental illness.

1441. Unprofessional Conduct –delete: (a) inclusion of gag clause in an agreement to settle a civil suit; (d)(1) failure to report indictment or information charging a felony against the licensee; and (d)(2) failure to report arrest of the licensee. Modified (b) specifying that the subsection did not apply to a licensee who does not have access to and control over the “documents;” previously, read “medical records.”

1443.6. Required Actions Against Registered Sex Offenders – delete the section.

The modified text was noticed July 11, 2011, and the 15-day comment period ended July 27, 2011. Three written comments were received: 1) Brian Stiger, Acting DCA Director; 2) Julianne D’Angelo Fellmeth, Administrative Director, Center for Public Interest Law; and 3) Hochberg (individual). The comments were sent to Board members under separate cover.

Attachment: Modified regulatory language.

NEXT STEPS: Continue the regulatory process.

FISCAL IMPLICATIONS, IF ANY:

PERSON TO CONTACT: Geri Nibbs, MN, RN
916-574-7682

NOTICE OF AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Registered Nursing has proposed modifications to the text of section 1403, 1410, 1441, 1443.6, & 1444.5 in Title 16 Cal. Code Reg. which were the subject of a regulatory hearing on March 3, 2011. A copy of the modified text is enclosed.

Any person who wishes to comment on the proposed modifications to the rulemaking file may do so by submitting written comments on or before July 27, 2011 to:

Contact Person: Alcidia Valim
Agency Name: Board of Registered Nursing
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DATED: July 11, 2011


Louise Bailey, Interim Executive Officer

MODIFIED TEXT

BOARD OF REGISTERED NURSING

Specific Language of Proposed Changes

Text of new language in underline.

Changes to the proposed text are shown in double underline for additions, and double ~~strike-through~~ for deletions.

1403. Delegation of Certain Functions.

(a) The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said Code are hereby delegated to and conferred upon the executive officer, or, in his/her absence from the office of the board, his/her designee.

(b) All settlement agreements for the revocation, surrender, or interim suspension of a license approved pursuant to section 1403(a) shall be reported at regularly scheduled board meetings.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2708, Business and Professions Code.

1410. Application.

(a) An application for a license as a registered nurse by examination shall be submitted on an application form provided by the board, and filed with the board at its office in Sacramento. An application shall be accompanied by the fee and such evidence, statements or documents as therein required including evidence of eligibility to take the examination. The applicant shall submit an additional application and fee for the examination to the board or to its examination contractor, as directed by the board. The ~~B~~board shall provide the contractor's application to the applicant. No license shall be issued without a complete transcript on file indicating successful completion of the courses prescribed by the board for licensure or documentation deemed equivalent by the ~~B~~board.

(b) An application for a license as a registered nurse without examination under the provisions of Section 2732.1 (b) of the code shall be submitted on an application form prescribed and provided by the board, accompanied by the appropriate fee and by such evidence, statements, or documents as therein required, and filed with the board at its office in Sacramento.

(c) The applicant shall be notified in writing of the results of the evaluation of his/her application for license if the application is rejected.

~~(d) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice nursing safely because the applicant's ability to~~

~~practice may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete.~~

~~The report of the evaluation shall be made available to the applicant.~~

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 480, ~~820~~, 2729, 2732.1, 2733, 2736, 2736.5, 2736.6, 2737 and 2815, Business and Professions Code.

1441. Unprofessional Conduct.

In addition to the conduct described in Section 2761 (a) of the Code, "unprofessional conduct" also includes, but is not limited to, the following:

~~(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:~~

~~(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.~~

~~(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.~~

~~(b)~~ (a) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, ~~medical records the documents.~~

~~(c)~~ (b) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

~~(d)~~ (c) Failure to report to the board, within 30 days, any of the following:

~~(1) The bringing of an indictment or information charging a felony against the licensee.~~

~~(2) The arrest of the licensee.~~

~~(3)~~ (1) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

~~(4)~~ (2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

~~(e)~~ (d) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2761 and 2765, Business and Professions Code.

1443.6. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 480, 2736, 2750, 2759, and 2760.1, Business and Professions Code; and Section 11425.50, Government Code.

1444.5. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -for example, the presence of mitigating factors; the age of the case; evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any acts of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

NOTE: Authority cited: Section 2715, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 726, 729, 2750, 2759, 2761 and 2762, Business and Professions Code; Section 44010, Education Code; and Sections ~~11400.20 and~~ 11425.50(e), Government Code.

BOARD OF REGISTERED NURSING
Administrative Committee
Agenda Item Summary

AGENDA ITEM: 6.3
DATE: September 14, 2011

ACTION REQUESTED: Regulatory Proposal: Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

REQUESTED BY: Jeannine Graves, RN
President

BACKGROUND:

The Board has promulgated regulations amending and updating its Disciplinary Guidelines to include uniform standards related to substance abuse reflecting changes in current law and the current probationary environment, clarifying existing language, and making technical changes. The current Disciplinary Guidelines referenced in the regulation (October 2002) is updated as of February 2011.

The public comment period ended June 10, 2011, and one person (Hochberg) submitted a written testimony, which will be sent to Board members under separate cover. The public hearing was held June 15, 2011, and several persons testified. Board members Darlene Bradley, Judy Corless, Jeannine Graves, Dian Harrison, Erin Niemela, Catherine Todero, and Kathrine Ware were present.

NEXT STEPS: Continue the regulatory process.

FISCAL IMPLICATIONS, IF ANY:

PERSON TO CONTACT: Don Chang
DCA Legal Counsel
(916) 574-8220